HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting).

(Chapter VIII Rule 32 (2)(b)

Description of the case.

W.P. No. 498 / 2004 (S/S) with 308/04 (S/S)
Bhawan Singh Bisht.

Vs.

D. M. Nainital & ors.

Approved for reporting.

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Not approved for reporting

Date of decision 13.06.2005

Initial of Judge

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Civil Writ Petition No. 498 of 2004 (S/S)

Bhwan Singh Bist ..... Petitioner

Versus

District Magistrate, Nainital & others..... Respondents

Civil Writ Petition No. 308 of 2004 (S/S)

Maya Arya ..... Petitioner

Versus

State of Uttaranchal & others ..... Respondents

Mr. Sudhansu, Sr. Advocate for the petitioner.
Learned Standing Counsel for the State

Dated: June 13, 2005

Hon'ble Rajesh Tandon, J

Heard the learned counsel for the parties.

By the present writ petitions, the petitioners have prayed for the issue of a writ of mandamus commanding the respondents to regularize the petitioners on the post of Amin/ Wasil Baqi Nawis.

Brief facts giving rise to the present writ petitions are that the petitioners were working as Seasonal Amin in District Nainital. According to the petitioners they have worked as Seasonal Amin since 1994 continuously, but the respondents are giving repeated and deliberate breaks in the service of the petitioners in order to break the continuity of service on account of the fact that the job of the petitioners is of seasonal character, which is causing immense hardship to the petitioner.

The petitioners have submitted that they have preferred a writ petition bearing No. 36942 of 1992 before Hon'ble

Allahabad High Court, where a direction was made that the case is covered by the judgment in Writ Petition No. 9557 of 1997 (Umarao Singh and others v. State of U.P. and others) decided on 16.7.1997 The observations of the Hon'ble Allahabad High Court in the aforesaid writ petition are quoted below:

> *"Petitioner has preferred earlier a writ petition which was disposed of finally with a direction that the District Collector, Haridwas shall decide the representation of the petitioner regarding the regular selection of the petitioner on the post of Collection Amin under the Collection Amins Rules, 1974 as amended in 1992. The petitioner is entitled to be considered under 35% reserved quota as provided in the said Rules. The Collector, Haridwar has rejected the claim of the petitioner holding that there was no vacancy.*
>
> *Thus, this petition is disposed of finally with a direction that wherever respondents fill up the vacancies on regular basis under 35% reserved category as provided under the Rules, the claim of the petitioner shall also be considered and if the respondents require services of the Seasonal Collection Amins, instead of adopting the pick and choose method, they shall give the chance to the seasonal Collection Amins strictly in accordance with the seniority."*

After the aforesaid judgment was passed, the Collector, instead of regularizing the service of the petitioners illegally removed and terminated the services of the petitioner.

Petitioner has submitted that on 7th August, 2000, a Circulation was made for appointment of regular Amins under 35% quota system. The said Circular is quoted below:

> **''विषयः 35 प्रतिषत सीजनल संग्रह अमीनों की नियमित नियुक्ति के संबंध में।**
>
> उत्तर प्रदेष कलैक्षन अमीन सेवा नियमावली (पांचवा संषेाधन) 1992 के नियमक 5–1 (ख) के अनुसार संग्रह अमीनों के रिक्त पदों में से 35 प्रतिषत पदों पर सामयिक संग्रह अमीनों ...ने की कार्यवाही नियम 5–1 (स) व (क) (ख) में

उल्लिखित शर्तों के अधीन जिला स्तर पर की जानी है जिसके लिए निम्न प्रारूप पर सूचना एक सप्ताह के अन्दर इस सीजनल संग्रह अमीनों के संबंध में ही भेजी जावे जिनकी 1406 कस्बों में 4 फसली अथवा उससे अधिक समय हो चुका हो। यहां यह भी स्पष्ट करना है कि प्रस्तुत किया जाने वाला विवरण पूर्व प्रेषित विवरणों के आधार पर सत्य हो। कार्य एवं आयकर के संबंध में पृथक से टिप्पणी गोपनीय रूप से प्रेषित की जाय।''

Petitioners have submitted his request for the appointment as regular Amin amongst 35% reserved posts, but the claim of the petitioners was not considered inspite of their representations made from time to time and as such, the petitioners have filed the present writ petitions claiming their regularization.

A counter affidavit has been filed by the State, wherein, it has been stated that mere fact that the petitioner has been engaged to work as Season Amin for about last 10 years does not clothe the petitioner with any right to get regular appointment on the post of Collection Amin.

Petitioners have referred the Rules known as U.P. Collection Amins Service Rules, 1974, where the source of recruitment has been defined under Rule 5, the same is quoted below:

> ***"5. Source of recruitment:*** *(1) Recruitment to posts in the ordinary grade of the service shall be made on the result of competitive examination as provided in Part V of these rules:*
>
> *Provided that subject to availability of suitable candidates, up to fifteen per cent of the vacancies shall be filled by promotion from amongst such substantively appointed collection peons:*
>
> *(a) who have passed at least High School Examination of the Board of High school and Intermediate Education, Uttar Pradesh or an Examination recognized by the Government as equivalent thereto; and*

(b) who have worked in the Collection Organization of the Revenue Department for a period of at least six Fasals:

Provided further that thirty-five per cent vacancies shall be filled by selection from amongst such Seasonal Collection Amins-

(a) who have worked satisfactorily for at least four Fasals;

(b) whose age on the first day of July of the year in which selection is made does not exceed 45 years:

Provided also that if suitable candidates are not available, remaining vacancies shall be filled by general candidates through direct recruitment."

Learned counsel for the petitioners has referred the judgment of the Apex Court in the case of State of U.P. Vs Chandra Prakash Pandey & others reported in JT 2001 (4) SC 145, where the Apex Court has treated the Kurk Amins, who are appointed on commission basis, to be the holder of the Civil posts.

Learned counsel for the petitioners has also referred the judgment of the Hon'ble Allahabad High Court in writ petition No. 9557 of 1997 in the case of Umrao Singh & others Vs State of U.P. & others, wherein the Hon'ble Allahabad High Court has held as under:

"It ……..that the……in the hills is different form that in plains of U.P. The patwari was revenue official equivalent to Lekhpal but his powers were wider since they include police powers. Hence, the decision of this court relating to seasonal collection Amins the plains areas of U.P. cannot be applicable to the hill areas. In the hill areas, as alleged in the petition, the seasonal Collection Amins are doing exactly the same work as the Collection Amins, unlike in the plaints. Hence, there is nothing "Seasonal" about the work of Seasonal Collection

Amins. In fact the district Magistrate, Nainital has been repeatedly writing to the higher authorities in this connection vide annexures 1 and 2 to the writ petition. Similarly, the Seasonal Collection Peons are doing the same work as regular collection Peons.

In view of the un-rebutted allegations in the petition, I am of the opinion that this petition deserves to be allowed. since the petitioners have been performing same work of the regular collection amin and regular Collection Peon, I direct that they shall be given the same salaries, allowances and other benefits and other facilities as regular collection Amins and Collection Peon, as the case may be, on the principle of equal pay for equal work. The State Government is further directed to take a decision of the recommendation of the district Magistrate, Nainital for creation of posts (Copies of which are Annexure 1 & 2 to the writ petition) expeditiously and till then the services of the petitioners shall be continue without any

The petition is allowed. No order as to costs."

Similar matter came up for consideration before this Court in writ petition No. 4527 of 2001 (S/S) in the case of Inder Singh & others Vs State of Uttaranchal & others, wherein this Court, after relying upon the judgment of Umrao Singh (supra) has held as under:

"From the above it can be said without doubt that the facts of the instant writ petition are not at variance and the petitioners having worked as Seasonal Collection Amins for about 11 years continuously except for some artificial breaks they could not have been denied the benefit of the directions given in the afore-mentioned writ petitions by the Allahabad High Court. An attempt was made by the learned Standing Counsel to defend the inaction on the part of the respondents by submitted that the performance of the petitioners was not satisfactory

and therefore their cases for regularisation were not considered. Nothing has been brought on record to justify the plea and I am not inclined to accept that the petitioners were made to work for such a long period even though their work or conduct was unsatisfactory. The stand taken up by the respondents is nothing but only a false pretext to deprive the petitioners from getting the benefit of the notification dated 23.10.1992 under the relevant rules of 1974 and thereby to deny them equality of law in violation of the mandate of Articles 14 and 16 of the Constitution of India.

A perusal of the aforesaid facts clearly indicate that the discriminatory treatments are being given to Seasonal *Collection Amins.* Article 38 and 39(a) of the Constitution of India provides that the State shall strive to promote the welfare of the people by securing and protecting as effectively as it may the social order in which justice, social, economic and political protection can be given to the people. Article 38 and 39(a) of the Constitution of India are quoted as below:

"38. State to secure a social order for the promotion of welfare of the people *–(1) The State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social economic and political, shall inform all the institutions of the national life.*

(2) The State shall, in particular, strive to minimize the inequalities in income, and endeavour to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations.

39. Certain principles of policy to be followed by the State- *The State shall in particular, direct its policy towards securing-*

(a) that the citizens, men and women equally, have the right to an adequate means of livelihood."

Similar is the message in the case of D.S. Nakara and others Vs Union of India reported in AIR 1983 Supreme Court 130, where the concept of social justice has been laid down by the Apex Court, relevant observations of which are quoted below:

> *"65. That is the end of the journey. With the expanding horizons of socio-economic justice, the socialist Republic and welfare State which we endeavour to set up and largely influenced by the fact that the old men who retired when emoluments were comparatively low and are exposed to vagaries of continuously rising prices, the falling value of the rupee consequent upon inflationary inputs, we are satisfied that by introducing an arbitrary eligibility criteria; 'being in service and retiring subsequent to the specified date' for being eligible for the liberalized pension scheme and thereby dividing a homogenous class, the classification being not based on any discernible rational principle and having been found wholly unrelated to the objects sought to be achieved by grant of liberalized pension and the eligibility criteria devised being thoroughly arbitrary, we are of the view that the eligibility for liberalized pension scheme of begin in service on the specified date and retiring subsequent to that date in impugned memoranda, Exhibits P-1 and P-2 violates Article 14 and is unconstitutional and is struck down."*

The Hon'ble Apex Court in the case of Kapil Hingorani has also emphasized for improving the methods of production, conservation and distribution of food by making full use of technical and scientific knowledge, wherein paragraph 50 of the judgment, the term "life" has been defined relying upon the judgment of Field, J. in Munn V. Illinois reported in 1877 (94) US 1131, as under:

"Paragraph- 50: The terms 'life' used in Article 21 of the Constitution of India has a wide and far reaching concept. It includes livelihood and so many other facets thereof. "Life", as observed by Field, J. in Munn V. Illinois [1877(94)US 1131] means something more than mere animal existence and the inhibition against the deprivation of life extends to all those limits and facilities by which life is enjoyed. [See Board of Trustees of the Post of Bombay Vs. Dilipkumar Raghavendranath Nadharni and others [1983(1) SCC 124] and Olga Tellis and others Vs. Bombay Municipal Corporation and others [1985(3) SCC 545.]"

It is not disputed that the Seasonal Amins are working for the last more than 10 years and yet, they have not been categorized as regular Amins.

In the case of State of Haryana Vs Piara Singh reported in 1992(4) SCC 118, the Hon'ble Apex Court has laid emphasis on the necessity and requirement to regularize the casual employees in the following words:

"So far as the work-charged employees and the casual labour are concerned, the effort must be to regularise them as far as possible and as early as possible subject to their fulfilling the qualifications, if any, prescribed for the post and subject also to availability of work. If a casual labourer is continued for a fairly long spell – say two or three years – a presumption may arise that there is regular need for his services. In such a situation, it becomes obligatory for the concerned authority to examine the feasibility of his regularization. While doing so, the authorities ought to adopt a positive approach coupled with empathy for the person. As has been repeatedly stressed by this Court, security of tenure is necessary for an employee to give his best to the job."

In another writ petition bearing No. 3320 (S/S) of 2001, the following observations have been made.

"Learned counsel for the petitioner submits that the petitioner is seasonal collection Amins and in view of the circular issued by Board of Revenue he collected 70% of the demand which were submitted to him, therefore, he was entitled to be considered in view of the explanation appended to Rules, 1974 and as amended in the year 1992.

If this fact is correct and the petitioner is eligible according to Rule, the opposite parties are directed to consider the case of the petitioner for appointment as regular collection Amin under 35% quota to be filled within a period of one month from the date of production of certified copy of this order. The petitioner shall be allowed to continue till his case for appointment as regular collection Amin is considered and if work and post is available and in case the Commissioner has given sanction for appointment of the Seasonal Collection Amins."

For the reasons aforesaid, both these writ petition are to be disposed of with the appropriate directions to the respondents.

Accordingly, the writ petitions are, hereby, allowed. Writ of mandamus is issued directing the respondents to consider the petitioners for regularization in accordance with law within a period of three months from the date of receipt of the certified copy of this order.

(Rajesh Tandon, J.)

Dt. June 13, 2005
*Dhyani